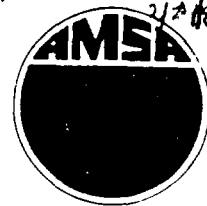


# BULLETIN



AMSA Members & Subscribers Date: February 24, 1989  
 From: National Office Bulletin No.: TB 89-5

Subject: Pretreatment Program Assessment.

3/23/89 For:  
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 JAS  
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 J.P.

The Acting Assistant Administrator for the EPA's Office of Water, Rebecca Hanmer, reported at the recent AMSA Winter Technical Meeting that the EPA intends to escalate enforcement actions against POTWs for violations of pretreatment requirements. Beginning in this fiscal year, the EPA will accelerate from audit and inspection recommendations through non-penalty to penalty Administrative Orders. This activity is being undertaken in response to the Agency's interpretation of pretreatment compliance statistics, which, according to Ms. Hanmer, are very poor with respect to proper implementation and compliance with pretreatment program regulations. Attached is a copy of an EPA memo describing the pretreatment enforcement initiative.

According to the EPA, 1500 local pretreatment programs have been approved, with 90% of these programs over three years old. On the basis of a survey of 320 of the programs, the EPA believes that 22% have been implemented successfully, while only 24% have developed generally adequate local limits, and upwards of 30% are in significant violation of some part of the pretreatment regulations.

In addition to the Agency's compliance evaluation, the pretreatment program is coming under intense scrutiny due to several other factors. Pretreatment is seen as the common element for some important recent pollution control initiatives, including the 304(l) toxic hot spots regulation, sewage sludge use and disposal limitations, the combined sewer overflow (CSO) permitting strategy, and upcoming air toxics requirements. Furthermore, this year the Resource Conservation and Recovery Act (RCRA) is up for re-authorization, and it is likely that the Domestic Sewage Exemption will be questioned or even challenged. The Domestic Sewage Exemption excuses POTWs from the requirements of RCRA, and although the findings of the Domestic Sewage Study support

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retention of the exemption, bad reports on the effectiveness of the pretreatment program could jeopardize the exemption.

For AMSA to effectively respond to questions about the pretreatment program, we need to begin collecting information from member agencies on the status and effectiveness of their programs. **If your pretreatment program has been audited by the state or federal regulatory authorities, or you have had a compliance inspection performed, please send a copy of the findings and recommendations from the most recent audits or inspections to Peter Ruffier at the AMSA National Office by March 24, 1989. If your program has been cited for any violations, and enforcement action has been taken, please include this information as well.** Attached to this Bulletin as item #2 is a cover sheet that you are requested to complete and return along with the above information. Your cooperation is appreciated.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FEB 1 1989

MEMORANDUM

**SUBJECT:** Enforcement Initiative for Failure to Adequately Implement Approved Local Pretreatment Programs

**FROM:** *James R. Elder*  
James R. Elder, Director  
Office of Water Enforcement and Permits (EN-335)

Edward E. Reich *E. E. Reich*  
Deputy Assistant Administrator  
for Civil Enforcement (LE-133)

**TO:** Regional Water Management Division Directors  
Regional Counsels

As part of our continuing policy to seek improvement in the pretreatment implementation efforts of approved local pretreatment programs on a national basis, we have decided to initiate a nationally-coordinated failure-to-implement pretreatment program enforcement initiative. This initiative will address inadequate implementation efforts of local pretreatment programs by taking formal enforcement actions against noncomplying POTWs in every Region within a specific timeframe.

Effective implementation of approved pretreatment programs by municipalities is critical to controlling the discharge of toxic pollutants to surface waters; protecting the substantial financial investment in POTWs; protecting POTW worker health and safety; and preventing the contamination of sludge. Yet, data from the most recent QNCR report indicates that over 250 POTWs were reported for various aspects of inadequate pretreatment program implementation. Preliminary data from the Pretreatment Permits and Enforcement Tracking System (PPETS) indicates that approximately 47% of POTWs with approved local pretreatment programs may be in violation of one or more of the three pretreatment reportable noncompliance (RNC) criteria related to issuance of control mechanisms, inspections, or adequacy of

enforcement against significant industrial users in significant noncompliance (SNC). Given the fact that 90% of the pretreatment programs have been approved for at least three years, we believe that these POTWs have had adequate time to fully implement their programs.

Thus, we believe a national enforcement initiative is both appropriate and necessary to ensure that approved local pretreatment programs are fully implemented across the country. We consider such an enforcement initiative as our top water quality enforcement priority for this year. On January 17 and 18, Bill Jordan and John Lyon held conference calls with your Compliance and Regional Counsel Branch Chiefs and there was general support from all the Regions for this enforcement initiative. In fact, several Regions already had designated pretreatment enforcement as their top priority.

The initiative will include both administrative penalty orders (APOs) and civil judicial actions, but we would like to see each Region contribute at least one civil judicial referral to the initiative. Regions which directly oversee larger numbers of approved local pretreatment programs should contribute additional referrals and administrative penalty orders. States which have received approval to administer pretreatment programs are invited to participate in this initiative, with State Attorneys General filing civil judicial cases in State courts. Where appropriate, Regions and States should include key industrial users which are violating pretreatment standards and requirements as part of a POTW civil referral or proposed APOs.

EPA Regions are requested to provide EPA Headquarters with a proposed list of POTW candidates (including those in States with approved pretreatment programs) for this enforcement initiative. Among the criteria which the Regions should consider in the selection of candidates are the following:

- o The POTW has been listed on the QNCR for pretreatment violations for more than two quarters,
- o The POTW has discharges which impact near-coastal waters and enforcement would support the Agency's Near Coastal Water Initiative,
- o The POTW exceeded one or more of the pretreatment RNC criteria or other specific requirements in their permit or approved program (The magnitude of such exceedances should also be considered.), or

- o The POTW has unresolved TRC or chronic effluent violations (including heavy metal effluent violations) which appear to be related to inadequate pretreatment implementation.

All candidates should have an NPDES permit which, at a minimum, requires implementation of the approved pretreatment program. Also, the approved program should provide an adequate statement of program requirements.

Upon review of the Regions' list of candidates, Headquarters may inquire about additional POTW enforcement candidates as appropriate. EPA Headquarters staff will be available for two-day Regional visits (as necessary) to provide a better opportunity for face-to-face discussion of POTW enforcement candidates and details of the initiative.

Key dates in the schedule for this initiative are shown below:

- o 2/6-3/1/89 Review of QNCR, PPETS, etc. by Region
- o 3/3/89 Submission of POTW candidates (designated as probable referrals or APOs) to EPA Headquarters by Regions
- o 3/6-4/7/89 Dialogue, negotiation, and two-day visits (as necessary) to Regions to discuss and confirm candidates
- o 3/20-5/31/89 Preparation of referral/APO packages by Regions
- o 4/3-6/2/89 Submission of referrals and APOs (as appropriate) by Regions to EPA Headquarters

- o 4/3-7/7/89            Headquarters review of referrals and APOs (as appropriate) and subsequent referral of civil cases to the Department of Justice
- o 4/3-8/18/89          Civil judicial cases filed by the Department of Justice and proposed APOs issued
- o 8/31/89              National press release regarding the initiative (will include similar cases filed and APOs issued since 1/1/89)

Regarding APOs, please note that Headquarters review of APOs will only be required for those Regions which have not yet fulfilled the concurrence requirements identified in the guidance on administrative penalties issued on August 27, 1987. Regarding referrals, neither Headquarters nor the Department of Justice will stockpile or hold cases expressly to fit the proposed filing window but will continue to move the cases through the system.

Documents such as the August 4, 1988 "Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs" and the December 22, 1988 "Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program" should be utilized in this initiative as well as in other formal enforcement actions for failure to implement.

In regard to past civil referrals and APOs for failure to implement, for the purpose of this initiative, Headquarters will credit the Regions with civil referrals which are still in the review pipeline but not yet filed.

In a related matter, a preliminary review of PPETS indicates that data is still missing for the following large cities: Boston, Buffalo, Detroit, St. Louis, Phoenix, Tucson, San Francisco, Honolulu, Seattle, and Portland. Regions should make every effort to provide such data as soon as possible, but no later than March 6, 1989.

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Thank you for your cooperation in this effort. If you have any questions or concerns in regard to this enforcement initiative, please contact Jim Elder (FTS-475-8488) or Bill Jordan (FTS-475-8304) in OWEF or John Lyon (FTS-475-8177) in OECM. If your staff wishes to discuss specific details of the initiative, including the selection process, proposed Regional visits, merits of a potential case, etc., please contact either Andy Hudock (FTS-382-7745) or David Hindin (FTS-475-8547) of our respective staffs.

cc: Rebecca Hanmer, OW  
David Buente, DOJ  
Cynthia Dougherty, OWEF  
Susan Lepow, OGC  
Regional Counsel Water Branch Chiefs  
Regional Compliance Branch Chiefs  
Regional Pretreatment Coordinators/Liaisons

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ATTACHMENT #2  
PRETREATMENT SURVEY INFORMATION

Agency Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_ telephone #: \_\_\_\_\_

Date of the Pretreatment audit or compliance report for which the findings are attached: \_\_\_\_\_

Who conducted the audit or inspection (State or Federal)? \_\_\_\_\_

Is this the most recent audit or inspection? \_\_\_\_\_

How many other pretreatment audits or compliance inspections have been conducted of your agency? \_\_\_\_\_

What follow-up actions have been taken by your agency in response to the findings of the audits or inspections?

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What follow-up actions have been taken by the approval authority in response to the findings of the audits or inspections?

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Has formal enforcement action been taken against your agency for pretreatment program violations? Please describe the action(s) and the basis for them:\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

If any problems were identified in the audit or inspection, have they now been corrected--

To your satisfaction?\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the satisfaction of the approval authority?\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please complete the above information and return with a copy of the findings and recommendations from the most recent audits or inspections to Peter Ruffier at the AMSA National Office by March 24, 1989.